

(a) of this rule.

(2) Any failure to comply with an order under the provisions of paragraph (c) of this rule may be considered by the Board of Patent Interferences as basis for applying appropriate restrictions against the party failing to comply, for holding certain facts to have been established, and in an appropriate case for awarding priority against him, or for taking such other action as may be deemed appropriate.

(c) The parties may by agreement among themselves modify any of the foregoing requirements consistent with the schedule of times for taking testimony and filing the record. In the absence of such agreement, discovery will not be permitted prior to the period set for the preparation for testimony. (Added June 11, 1971.)

### **PROTEST AND PUBLIC USE PROCEEDINGS**

**291. Protests to the grant of a patent.** The patent statutes do not provide for opposition to the grant of a patent on the part of the public. Protests to the grant of a patent are ordinarily merely acknowledged, and filed after being referred to the examiner having charge of the subject matter involved for his information.

**292. Public use proceedings.** (a) When a petition for the institution of public use proceedings, supported by affidavits or declarations, is filed by one having information of the pendency of an application and is found, on reference to the primary examiner, to make a prima facie showing that the invention involved in an interference or claimed in an application believed to be on file had been in public use or on sale one year before the filing of the application, or before the date alleged by an interfering party in his preliminary statement or the date of invention established by such party, a hearing may be had before the Commissioner to determine whether a public use proceeding should be instituted. If instituted, times may be set for taking testimony, which shall be taken as provided by rules 271 to 286. The petitioner will be heard in the proceedings but after decision therein will not be heard further in the prosecution of the application for patent.

(b) The petition and accompanying papers should be filed in duplicate, or served upon the applicant, his attorney or agent of record, and petitioner should offer to bear any expense to which the Office may be put in connection with the proceeding.

### **REVIEW OF PATENT OFFICE DECISIONS BY COURT**

**301. Appeal to U.S. Court of Customs and Patent Appeals.** Any applicant dissatisfied with the decision of the Board of Appeals, and any party to an interference dissatisfied with the decision of the Board of Patent Interferences, may appeal to the U.S. Court of Customs